

## **NATIONAL CREDIT UNION ADMINISTRATION**

### **Guidance Regarding Prohibitions Imposed by Section 205(d) of the Federal Credit Union Act**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed Interpretive Ruling and Policy Statement 08-1

**SUMMARY:** The NCUA is proposing to adopt an Interpretive Ruling and Policy Statement (IRPS) regarding prohibitions imposed by Section 205(d) of the Federal Credit Union Act (FCU Act) (12 U.S.C. 1785(d)(1)). Section 205(d) of the FCU Act prohibits a person who has been convicted of any criminal offense involving dishonesty or breach of trust, or who has entered into a pretrial diversion or similar program in connection with a prosecution for such offense, from participating in the affairs of an insured credit union except with the prior written consent of the NCUA Board. The proposed IRPS provides direction and guidance to federally-insured credit unions and those persons who may be affected by Section 205(d) because of a prior criminal conviction or pretrial diversion program participation by describing the actions that are prohibited under the statute and describing the procedures for applying for NCUA Board consent on a case-by-case basis.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site:  
[http://www.ncua.gov/news/proposed\\_regs/proposed\\_regs.html](http://www.ncua.gov/news/proposed_regs/proposed_regs.html). Follow the instructions for submitting comments.
- E-mail: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name] Comments on Proposed IRPS 08-1” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

**FOR FURTHER INFORMATION CONTACT:** Jon Canerday, Trial Attorney, Office of General Counsel, at the above address, by email at [canerday@ncua.gov](mailto:canerday@ncua.gov) or by telephone at (703) 518-6548.

## **SUPPLEMENTARY INFORMATION:**

### **A. Introduction**

Section 205(d) of the FCU Act prohibits, without the prior written consent of the NCUA Board, a person convicted of any criminal offense involving dishonesty or breach of trust, or who has entered into a pretrial diversion or similar program in connection with a prosecution for such offense, from becoming or continuing as an institution-affiliated party, or otherwise participating, directly or indirectly, in the conduct of the affairs of an insured credit union. The NCUA Board is proposing to issue guidance and provide additional information to the public regarding this

provision in the form of an IRPS. NCUA believes public comment on this IRPS will be helpful, and NCUA encourages interested members of the public to provide their comments. NCUA also solicits input from the public as to whether the format of this guidance as an IRPS is appropriate or whether a regulation would be more suitable.

## **B. Background**

Under Section 205(d)(1) of the FCU Act, except with the prior written consent of the NCUA Board, a person who has been convicted of any criminal offense involving dishonesty or breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense may not:

- become, or continue as, an institution affiliated party with respect to any insured credit union; or
- otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union.

Section 205(d)(1)(B) further provides that an insured credit union may not allow any person described above to participate in the affairs of the credit union without NCUA Board consent. Section 205(d)(2) imposes a ten-year ban against the NCUA Board's consent for a person convicted of certain crimes enumerated in Title 18 of the United States Code, absent a motion by the NCUA Board and approval by the sentencing court. Finally, Section 205(d)(3) states that "whoever knowingly violates" (d)(1)(A) or (d)(1)(B) commits a felony, punishable by up to five years in jail and a fine of up to \$1,000,000 a day.

Section 19 of the Federal Deposit Insurance Act (FDIA) contains a prohibition provision similar to Section 205(d) of the FCU Act. The Federal Deposit Insurance

Corporation (FDIC) and the Office of Thrift Supervision (OTS) have published guidance regarding prohibitions imposed by Section 19 of the FDIA.<sup>1</sup>

The NCUA Board has not previously adopted any policies or regulations concerning how it analyzes the conduct of an applicant when deciding whether or not to grant consent to participate pursuant to Section 205(d). Section 205(d) itself imposes no guidance or limitations on the information that the NCUA Board may consider. The Board has on occasion looked to the FDIC's SOP for guidance in the past when reviewing the limited number of prior requests for consent under Section 205(d). However, in light of several recent applications requesting the NCUA Board's consent pursuant to Section 205(d), the Board believes it may now be appropriate to issue its own guidance on this topic. In light of the FDIC's greater experience in this area, NCUA has drawn upon the FDIC SOP extensively in creating the proposed IRPS.

NCUA is especially concerned that many insured credit unions, as well as institution affiliated parties, may not be aware of the prohibition imposed by Section 205(d). NCUA believes that the issuance of an IRPS will help put the credit union community on notice of Section 205(d) so that insured credit unions can properly screen prospective employees prior to making hiring decisions. Furthermore, credit unions that failed to adequately examine prospective employees before hiring will now be on notice of the need to examine their workforce to ensure their compliance with Section 205(d).

NCUA recognizes that certain offenses are so minor and occurred so far in the past so as to not present a risk to the insured credit union. For that reason, NCUA is

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<sup>1</sup> See, FDIC Statement of Policy Pursuant to Section 19 of the Federal Deposit Insurance Act, (63 FR 66177) (Dec. 1, 1998) (FDIC's SOP) and also the FDIC's rules at 12 CFR part 303, subpart L and 12 CFR part 308, subpart M. And see also the OTS' rules at 12 CFR Parts 509 and 585.

proposing to exclude certain de minimis offenses that meet specified requirements and juvenile offenses from the need to request consent from the Board.

The IRPS also establishes the procedures that an applicant seeking the necessary approval of the NCUA Board must follow. The proposed IRPS requires that an application for the NCUA Board's consent "should thoroughly explain the circumstances surrounding the conviction or pretrial diversion program" and "demonstrate that, notwithstanding the bar, the person is fit to participate in the conduct of the affairs of an insured credit union without posing a risk to its safety and soundness or impairing public confidence in that institution". The NCUA Board invites comments as to whether such an unstructured application or a more formalized application utilizing a form, similar to that used by the FDIC, is preferred. A copy of the FDIC form is attached.

The proposed IRPS establishes that the burden of proof for convincing the NCUA Board to grant consent rests with the applicant. Further, the IRPS sets out the criteria and factors the NCUA Board will consider when reviewing requests for consent. Lastly, the proposed IRPS explains the appeal rights available to applicants if the NCUA Board withholds consent under Section 205(d).

### **C. Regulatory Procedures**

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires that NCUA prepare an analysis describing any significant economic impact agency rulemaking may have on a substantial number of

small credit unions. 5 U.S.C. 601 et seq. For purposes of this analysis, NCUA considers credit unions under \$10 million in assets as small credit unions. Since the requirements in this IRPS are generally restatements of requirements in other laws, NCUA does not believe this proposed IRPS will have a significant economic impact on a substantial number of small credit unions. NCUA invites the public to comment on this issue.

### *Paperwork Reduction Act*

This proposed IRPS contains an application requirement. Any insured credit union that wishes to seek a waiver for a person who is prohibited under Section 205(d) because of a prior conviction for any crime involving dishonesty or breach of trust, or a pretrial diversion or similar program in connection with a prosecution for such crime, must apply for the NCUA Board's written approval before such person may participate in its affairs. NCUA has not mandated any specific requirements for this application, but anticipates it will consist of a letter to the NCUA Board requesting approval and briefly describing the nature of the prior conviction or pretrial diversion, along with an explanation or justification as to why the Board should grant consent for the person's participation in the affairs of an insured credit union. Additionally, NCUA anticipates that insured credit unions submitting an application may also address the specific factors identified in this IRPS that the Board will consider when reviewing applications for consent.

NCUA requests public comment on all aspects of the collection of information in this proposed IRPS, including whether a specific form should be required. NCUA believes that a relatively small amount of time will be necessary for the development of an application for consent under Section 205(d) because in many cases the persons prohibited will have in their possession copies of the necessary documentation pertaining to their prior convictions. In cases where the individuals

do not have the necessary documentation, either the persons or the insured credit unions will have to contact the respective courts to obtain copies of the documentation. In addition to obtaining copies of documentation pertaining to the prior convictions, the insured credit unions must draft a letter to serve as the application to request the Board's consent. Based on the length of prior applications under Section 205(d), NCUA estimates a burden of two hours per insured credit union and will revisit this estimate in light of the comments NCUA receives.

NCUA will submit the collection of information requirements contained in the IRPS to the OMB in accordance with the Paperwork Reduction Act of 1995. 44 U.S.C. 3507. NCUA will use any comments received to develop its new burden estimates.

Comments on the collections of information should be sent to Office of Management and Budget, Reports Management Branch, New Executive Office Building, Room 10202, Washington, D.C. 20503; Attention: Mark Menchik, Desk Officer for NCUA. Please send NCUA a copy of any comments you submit to OMB.

The likely respondents are insured credit unions.

Estimated annual number of respondents: 3.

Estimated average annual burden hours per respondent: 2 hours.

Estimated total annual disclosure and recordkeeping burden: 6 hours.

NCUA invites comment on:

- (1) The accuracy of NCUA's estimate of the burden of the information collections;
- (2) Whether a specific form, similar to the attached form required by the FDIC, should be required for the information collections;

- (3) Ways to minimize the burden of the information collections on insured credit unions, including the use of automated collection techniques or other forms of information technology; and
- (4) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Recordkeepers are not required to respond to this collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. NCUA is currently requesting a control number for this information collection from OMB.

#### *Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This proposed IRPS applies to all credit unions, but does not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed IRPS does not constitute a policy that has federalism implications for purposes of the executive order.

#### *The Treasury and General Government Appropriations Act, 1999 - - Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that the proposed IRPS would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).



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**Mary Rupp**

*Secretary of the Board*

**Authority:** 12 U.S.C. 1752a, 1756, 1766, 1785.

## **Interpretive Ruling and Policy Statement 08-1.**

### **Guidance Regarding Prohibitions Imposed by Section 205(d) of the Federal Credit Union Act**

#### **I. Background.**

This Interpretive Ruling and Policy Statement (IRPS) provides requirements, direction, and guidance to federally-insured credit unions and individuals regarding the prohibition imposed by operation of law by Section 205(d) of the Federal Credit Union Act (FCU Act) (12 U.S.C. 1785(d)). Section 205(d)(1) provides that, except with the prior written consent of the National Credit Union Administration (NCUA) Board, a person who has been convicted of any criminal offense involving dishonesty or breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense may not:

- become, or continue as, an institution affiliated party with respect to any insured credit union; or
- otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union.

Section 205(d)(1)(B) further provides that an insured credit union may not allow any person described above to engage in any conduct or to continue any relationship prohibited by Section 205(d). The statute imposes a ten-year ban against the NCUA Board's consent for a person convicted of certain crimes enumerated in Title 18 of the United States Code, absent a motion by the NCUA Board and approval by the sentencing court. (Section 205(d)(2)). Finally, Section 205(d)(3) states that "whoever knowingly violates" (d)(1)(A) or (d)(1)(B) is committing a felony, punishable by up to five years in jail and a fine of up to \$1,000,000 a day.

This IRPS provides guidance to credit unions and individuals as to who is subject to the prohibition provision of Section 205(d). Similarly, the IRPS defines what offenses come within the prohibition provision of Section 205(d) and thus require an application for the NCUA Board's consent to participate in the affairs of an insured credit union. The IRPS also identifies certain offenses that will be excluded from Section 205(d) and do not require the NCUA Board's consent. In order to assist those who may need the consent of the NCUA Board to participate in the affairs of an insured credit union, the IRPS explains the procedures to request such consent, clarifies the duty imposed on credit unions by Section 205(d), and identifies the factors the NCUA Board will consider in deciding whether to provide such consent. Finally, the IRPS explains how an applicant could appeal a decision by the NCUA Board denying an application for its consent.

## **II. Policies and Procedures Regarding Prohibitions Imposed by Section 205(d).**

### **A. Scope of Section 205(d) of the FCU Act.**

#### *1. Persons covered by Section 205(d):*

- Institution-affiliated parties.

Section 205(d) of the FCU Act applies to institution-affiliated parties, as defined by Section 206(r) of the FCU Act (12 U.S.C. 1786(r)), and others who are participants in the conduct of the affairs of an insured institution. Institution-affiliated party means:

(1) Any committee member, director, officer, or employee of, or agent for, an insured credit union;

(2) any consultant, joint venture partner, and any other person as determined by the Board (by regulation or on a case-by case basis) who participates in the conduct of the affairs of an insured credit union; and

(3) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

(A) any violation of any law or regulation;

(B) any breach of fiduciary duty; or

(C) any unsafe or unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured credit union. (Section 206(r)).

Therefore, all officials, committee members and employees of an insured credit union fall within the scope of Section 205(d) of the FCU Act. Additionally, anyone NCUA determines to be a de facto employee, applying generally applicable standards of employment law, will also be subject to Section 205(d).

Under Section 206(r), independent contractors are considered institution-affiliated parties if they knowingly or recklessly participate in violations, unsafe or unsound practices or breaches of fiduciary duty which are likely to cause significant loss to, or a significant adverse effect on, an insured credit union. As a general rule, an independent contractor who influences or controls the management or affairs of an insured credit union, would be covered by Section 205(d). In addition, a “person” for

purposes of Section 205(d) means an individual, and does not include a corporation, firm or other business entity.

- Participants in the affairs of an insured credit union.

A person who does not meet the definition of institution-affiliated party is nevertheless prohibited by Section 205(d) if he or she is considered to be participating, directly or indirectly, in the conduct of the affairs of an insured credit union. This is a term of art and is not capable of precise definition. As the OTS stated in the preamble to its regulation regarding Section 19 of the FDIA:

Given the changes in banking, including financial modernization and the rapid pace of technology, a regulatory listing of activities that constitute participation is neither practical nor advisable.

Accordingly, like FDIC's SOP, the interim final rule does not define precisely what activities constitute "participation."

Rather, agency and court decisions will provide the guide as to what standards will be applied. As a general proposition, however, participation will depend upon the degree of influence or control over the management or affairs of the [insured credit union]. Those who exercise major policymaking functions at [an insured credit union] would fall within this category.

72 FR 25948, at 25949 (May 8, 2007).

NCUA agrees with that view and will likewise not define what constitutes participation in the conduct of the affairs of an insured credit union but rather will analyze each individual's conduct on a case-by-case basis to determine if their conduct amounts to participating in the affairs of an insured credit union.

## *2. Offenses covered by Section 205(d):*

Except as indicated in paragraph (3), below, an application requesting the consent of the NCUA Board under Section 205(d) is required where any adult, or minor treated as an adult, has received a conviction by a court of competent jurisdiction for any criminal offense involving dishonesty or breach of trust, (a covered offense) or where such person has entered a pretrial diversion or similar program regarding a covered offense. The following definitions apply:

(i) Conviction. There must be a conviction of record. Section 205(d) does not apply to arrests, pending cases not brought to trial, acquittals, or any conviction which has been reversed on appeal. A conviction with regard to which an appeal is pending will require an application until or unless reversed. A conviction for which a pardon has been granted will require an application.

(ii) Pretrial Diversion or Similar Program. A pretrial diversion program, whether formal or informal, is characterized by a suspension or eventual dismissal of charges or criminal prosecution upon agreement by the accused to treatment, rehabilitation, restitution, or other non-criminal or non-punitive alternatives. Whether a program constitutes a pretrial diversion is determined by relevant federal, state or local law, and will be considered by the NCUA Board on a case-by-case basis.

(iii) Dishonesty or Breach of Trust. The conviction or entry into a pretrial diversion program must have been for a criminal offense involving dishonesty or breach of trust.

“Dishonesty” means directly or indirectly to cheat or defraud; to cheat or defraud for monetary gain or its equivalent; or wrongfully to take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state or local laws define as dishonest.

“Breach of trust” means a wrongful act, use, misappropriation or omission with respect to any property or fund which has been committed to a person in a fiduciary or official capacity, or the misuse of one's official or fiduciary position to engage in a wrongful act, use, misappropriation or omission.

Whether a crime involves dishonesty or breach of trust will be determined from the statutory elements of the crime itself. All convictions for offenses concerning the illegal manufacture, sale, distribution of or trafficking in controlled substances shall require an application for the NCUA Board’s consent under Section 205(d).

3. Offenses not covered by Section 205(d):

(i) De minimis Offenses. Approval is automatically granted and an application for the NCUA Board’s consent under Section 205(d) will not be required where the covered offense is considered de minimis, because it meets all of the following criteria:

- There is only one conviction or entry into a pretrial diversion program of record for a covered offense;
- The offense was punishable by imprisonment for a term of less than one year and/or a fine of less than \$1,000, and the punishment imposed by the court did not include incarceration;
- The conviction or pretrial diversion program was entered at least five years prior to the date an application would otherwise be required;
- The offense did not involve an insured depository institution or insured credit union; and
- The NCUA Board or any other federal financial institution regulatory agency has not previously denied consent under Section 205(d) of the FCU Act or Section 19 of the FDIA,

respectively, for the same conviction or participation in a pretrial diversion program.

Any person who meets the foregoing criteria must be covered by a fidelity bond to the same extent as other employees in similar positions. An insured credit union may not allow any person to participate in its affairs, even if that person has a conviction for what would constitute a de minimis covered offense, if the person cannot obtain required fidelity bond coverage.

Any person who meets the foregoing criteria for a de minimis offense shall disclose the presence of the conviction or pretrial diversion program to all insured credit unions or other insured institutions in the affairs of which he or she intends to participate.

(ii) Youthful Offender Adjudgments. An adjudgment by a court against a person as a “youthful offender” under any youth offender law, or any adjudgment as a “juvenile delinquent” by any court having jurisdiction over minors as defined by state law does not require an application for the NCUA Board’s consent under Section 205(d). Such adjudications will not be considered convictions for criminal offenses.

(iii) Expunged convictions. A conviction which has been completely expunged is not considered a conviction of record and will not require an application for the NCUA Board’s consent under Section 205(d).

**B. Duty imposed on credit unions.**

Section 205(d) imposes a duty upon every insured credit union to make a reasonable inquiry regarding the history of every applicant for employment. NCUA believes that

inquiry should consist of taking steps appropriate under the circumstances, consistent with applicable law, to avoid hiring or permitting participation in its affairs by a person who has a conviction or participation in a pretrial diversion program for a covered offense. The NCUA believes that at a minimum, each insured credit union should establish a screening process which provides the insured credit union with information concerning any convictions or pretrial diversion programs pertaining to a job applicant. This would include, for example, the completion of a written employment application which requires a listing of all convictions and pretrial diversion programs. When the credit union learns that a prospective employee has a prior conviction or entered into a pretrial diversion program for a covered offense, the credit union must submit an application requesting the NCUA Board's consent under Section 205(d) prior to hiring the person or otherwise permitting him or her to participate in its affairs.

If an insured credit union discovers that an employee, official, or anyone else who is an institution-affiliated party or who participates, directly or indirectly, in its affairs, is in violation of Section 205(d), the credit union must immediately place that person on a temporary leave of absence from the credit union and file an application seeking the NCUA Board's consent under Section 205(d). The person must remain on such temporary leave of absence until such time as the NCUA Board has acted on the application. When NCUA learns that an institution-affiliated party or a person participating in the affairs of an insured credit union should have received the NCUA Board's consent under Section 205(d) but did not, NCUA will look at the circumstances of each situation to determine whether the inquiry made by the credit union was reasonable under the circumstances.

#### C. Procedures for Requesting the NCUA Board's Consent Under Section 205(d).



Section 205(d) of the FCU Act serves, by operation of law, as a statutory bar to participation in the affairs of an insured credit union, absent the written consent of the NCUA Board. When an application for the NCUA Board's consent under Section 205(d) is required, the insured credit union must file a written application with the appropriate NCUA Regional Director. The purpose of an application is to provide the applicant an opportunity to demonstrate that, notwithstanding the bar, the person is fit to participate in the conduct of the affairs of an insured credit union without posing a risk to its safety and soundness or impairing public confidence in that institution. Such an application should thoroughly explain the circumstances surrounding the conviction or pretrial diversion program. The application should also address the relevant factors and criteria the NCUA Board will consider in determining whether to grant consent, specified below. The burden is upon the applicant to establish that the application warrants approval.

The application must be filed by an insured credit union on behalf of a person unless the NCUA Board grants a waiver of that requirement. Such waivers will be considered on a case-by-case basis where substantial good cause for granting a waiver is shown.

#### D. Evaluation of Section 205(d) Applications.

The essential criteria used by the NCUA Board in assessing an application for consent under Section 205(d) are whether the person has demonstrated his or her fitness to participate in the conduct of the affairs of an insured credit union, and whether the employment, affiliation, or participation by the person in the conduct of the affairs of the insured credit union may constitute a threat to the safety and soundness of the institution or the interests of its members or threaten to impair public confidence in the insured credit union.

In evaluating an application, the NCUA Board will consider:

- (1) The conviction or pretrial diversion program and the specific nature and circumstances of the covered offense;
- (2) Evidence of rehabilitation, including the person's reputation since the conviction or pretrial diversion program, the person's age at the time of conviction or pretrial diversion program, and the time which has elapsed since the conviction or pretrial diversion program;
- (3) The position to be held or the level of participation by the person at the insured credit union;
- (4) The amount of influence and control the person will be able to exercise over the management or affairs of the insured credit union;
- (5) The ability of management of the insured credit union to supervise and control the person's activities;
- (6) The applicability of the insured institution's fidelity bond coverage to the person;
- (7) For state chartered, federally insured credit unions, the opinion or position of the state regulator; and
- (8) Any additional factors in the specific case that appear relevant.

The foregoing criteria will also be applied by the NCUA Board to determine whether the interests of justice are served in seeking an exception in the appropriate court when an application is made to terminate the ten-year ban for certain enumerated offenses in violation of Title 18 of the United States Code prior to its expiration date. NCUA believes such requests will be extremely rare and will be made only upon a showing of compelling reasons.

Some applications can be approved without an extensive review because the person will not be in a position to present any substantial risk to the safety and soundness of

the insured credit union. Persons who will occupy clerical, maintenance, service or purely administrative positions, generally fall into this category. A more detailed analysis will be performed in the case of persons who will be in a position to influence or control the management or affairs of the insured credit union. Approval by the NCUA Board will be subject to the condition that the person shall be covered by a fidelity bond to the same extent as others in similar positions.

In cases in which a waiver of the institution filing requirement has been granted to an individual, approval of the application will be conditioned upon that person disclosing the presence of the conviction to all insured credit unions or other insured financial institutions in the affairs of which he or she wishes to participate. When deemed appropriate, approval may also be subject to the condition that the prior consent of the NCUA Board will be required for any proposed significant changes in the person's duties and/or responsibilities. Such proposed changes may, in the discretion of the appropriate Regional Director, require a new application for the NCUA Board's consent. When approval has been granted for a person to participate in the affairs of a particular insured credit union and subsequently that person seeks to participate in the affairs of another insured credit union, approval does not automatically follow. In such cases, another application must be submitted.

Moreover, any person who has received consent from the NCUA Board under Section 205(d) and subsequently wishes to become an institution affiliated party or participate in the affairs of an FDIC-insured institution, he or she must obtain the prior approval of the FDIC pursuant to Section 19 of the FDIA.

E. Appeal rights following the denial of an application under Section 205(d).

If the NCUA Board withholds consent under Section 205(d), the insured credit union (or in the case where a waiver has been granted, the individual that submitted the application) may request a hearing by submitting a written request within 30 days

following the date of the NCUA Board's action. The NCUA Board will apply the process contained in regulations governing prohibitions based on felony convictions, found at Part 747, Subpart D of Title 12, Code of Federal Regulations, to any request for a hearing. The insured credit union (or in the case where a waiver has been granted, the individual that submitted the application) may also waive a hearing and request that the NCUA Board determine the matter on the basis of written submissions.

## Federal Deposit Insurance Corporation

## CORPORATION GUIDELINES AND POLICIES WITH RESPECT TO SECTION 19

public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Assistant Executive Secretary (Administration), Room e09e, FDIC, Washington, DC 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064-0018), Washington, DC 20503.

On September 27, 1968, the Federal Deposit Insurance Corporation's Chairman addressed the following memorandum to all insured banks.

"The Federal Deposit Insurance Corporation has for some time been studying in detail Section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829), relating to the requirement for this Corporation's consent prior to any insured bank employing persons who have been convicted of crimes involving dishonesty or breach of trust.

"Section 19 provides as follows:

"Except with the written consent of the Corporation no person shall serve as a director, officer, or employee of an insured bank who has been convicted, or who is hereafter convicted of any criminal offense involving dishonesty or breach of trust. For each willful violation of this prohibition, the bank involved shall be subject to a penalty of not more than \$100 for each day this prohibition is violated, which the Corporation may recover for its use.

"Since the enactment of this law in 1950, our Board has reviewed cases coming under it on an ad hoc basis and each case has been judged on its own merits according to the particular facts and circumstances involved. The need for guidelines and standards to be applied prospectively has increased in recent years. Inquiries continue to come in from banking institutions asking what standards should be applied by them in determining whether an application under Section 19 is required. In addition, programs are now underway on both the Federal and state levels to hire and retrain the hardcore unemployed. Some of whom may have criminal records, and the banking community will no doubt participate in these programs to some degree. For these reasons, the Board of Directors has adopted the following general guidelines and policies with respect to Section 19. It is our hope that these guidelines will be of assistance to all banks having questions concerning the applicability of our law, and that they will, at the same time, serve to insure the continuing stability and confidence in our banking system."

## I, STANDARDS TO BE APPLIED IN DETERMINING WHETHER AN APPLICATION FOR CONSENT IS REQUIRED UNDER SECTION 19

A. There must be present a conviction of record. Arrests, pending cases not brought to trial, acquittals, or any conviction which has been reversed on appeal will be excluded from the requirements of Section 19. A conviction which is being appealed will require a Section 19 application until or unless otherwise reversed.

B. The conviction must be for a criminal offense involving dishonesty or breach of trust. Felonies as well as misdemeanors wherein dishonesty or breach of trust is involved are included within the definition. Dishonesty is defined to mean "to cheat or defraud for monetary gain or its equivalent, directly, or indirectly, or to wrongfully take from any person, property lawfully belonging to that person in violation of any criminal statute or code." (Acts of dishonesty are further defined to include, but not limited to, such acts which involve want of integrity, lack of probity, or involve a disposition to distort, defraud, cheat or to act deceitfully or fraudulently. Furthermore, dishonesty may also include crimes which by federal or state criminal statutes and codes are defined as dishonest.) Breach of trust is defined to mean "a wrongful use, misappropriation, or omission with respect to any property or fund which has been lawfully committed to a person in a fiduciary capacity."

## C. Youth Offenders

1. Adjudgment by a court against a person as a "youthful offender" under any youth offender law or adjudgment as a "juvenile delinquent" by a family court or any other court having jurisdiction over minors as defined by state law will not require an application under Section 19. Such adjudications are not considered convictions for criminal offenses.

## D. Adults and All Minors Convicted of Crimes

1. The conviction of any adult or minor by a court of competent jurisdiction for any criminal offense involving dishonesty or breach of trust as defined in paragraph B above will require an application for consent prior to a bank's employment of that person.

## II. THE CORPORATION'S POLICY WITH RESPECT TO APPLICATIONS MADE UNDER SECTION 19

A. In considering any application made by an insured bank to employ a person who has been convicted of a criminal offense involving dishonesty or breach of trust, the factors to be considered will include but will not be limited to the following: 1. The specific nature of the offense involved and the circumstances surrounding it.

2. The evidence of rehabilitation of the person since the date of his/her conviction (parole, suspension of sentence, and reputation of the person since conviction will be given consideration. Participation by the person in programs on the national or state levels to hire and retrain the hard-core unemployed also will be given consideration,
3. The age of the person at the time of his/her conviction.
4. The position to be held by the person in the bank.
5. The fidelity bond coverage applicable (or to be applicable) to the person.

## CORPORATION STATEMENT OF POLICY

The Board of Directors of the Federal Deposit Insurance Corporation approved the following statement of policy at its offices in Washington, D.C., on the 21st day of September, 1976:

The Corporation does not view Section 19 as being punitive in intent. Rather, the essential criterion in assessing such applications is whether the prospective director, officer, or employee constitutes a significant threat or risk to the safety and soundness of the applicant bank, and our policy is to approve applications in which this risk is absent.

Existing Corporation policy on Section 19 applications has involved consideration of the nature and circumstances of the offense, the evidence of rehabilitation, the position to be held by the employee in the bank and the applicability of the bank's fidelity bond coverage to the employee. These remain important considerations in determining the risk to the bank in the employment of the prospective employee.

On this basis, many applications can be routinely approved because the prospective employee will not be in a position to constitute any substantial risk to the safety and soundness of the bank. Employees who will occupy clerical, maintenance, or service positions or, in many banks, administrative or teller positions generally pose no such risk, and on application from the board of directors of the bank, normally will be able to be routinely approved. A more detailed analysis will be required in the case of directors, officers, or other employees in position to control or influence the disposition of sums of money large in relation to the size of the bank,

## FEDERAL DEPOSIT INSURANCE CORPORATION

## APPLICATION PURSUANT TO SECTION 19 OF THE FEDERAL DEPOSIT INSURANCE ACT

## SECTION A - APPLICANT BANK INFORMATION

NAME OF BANK

f 2, DATE OF APPLICATION

## 3.. ADDRESS OF BANK /Street, City, County, State and ZIP Code)

We have, in connection with this Request, read the following provision of the Federal Deposit Insurance Act which governs requests by insured banks for the consent of the Federal Deposit Insurance Corporation to the employment, by the Bank, of a person who has been convicted of a crime involving dishonesty or breach of trust, namely:

~~Section 79. Except with the written consent Of the Corporation, no person shall serve as a director, officer, or employee of en insured bank who has been convicted, or who is hereinafter convicted, of any criminal offense involving dishonesty or a breach of trust. For each willful violation of this prohibition, the bank involved shall be subject to a penalty of nor more than 3'100 for each date this prohibition is violated, . which the Corporation may recover for its use.~~

In support of this Request, the following statements, representations and information are submitted for the purpose of inducing the Federal Deposit Insurance Corporation to grant its written consent to the service as a director, officer, or employee of the bank, a person who has been convicted of a crime involving dishonesty or a breach of trust:

~~SECTION B - BIOGRAPHICAL INFORMATION CONCERNING THE PROSPECTIVE DIRECTOR - OFFICER - OR EMPLOYEE~~

1. NAME

2. ADDRESS /Street, City, State and ZIP Code)

3. DATE OF BIRTH (Mo Day Yr)

d. PLACE OF BIRTH (City and State)

S, SOCIAL SECURITY NUMBER

6. NAME AND ADDRESS OF PRESENT OR MOST RECENT EMPLOYER (Street, City, State and ZIP code)

7. INDICATE TOTAL NUMBER OF VOTING SHARES OF THE BANK'S STOCK DIRECTLY OR INDIRECTLY OWNED OR OTHERWISE CONTROL. LEO.  
(Answer "none" if appropriate. )

## SECTION C - INFORMATION RELATIVE TO CONVICTION(S)

1. DESCRIPTION OR NATURE OF CRIME (a)	DATE OF CONVICTION (b)	NAME AND ADDRESS OF COURT (c)	DISPOSITION (d)

NOTE: //additional convictions for crimes involving dishonesty or breach of trust am discovered subsequent co approval of this 'moves', another request may be necessary.

2. Briefly describe the nature of the offense and the circumstances surrounding it. Include age of prospective employee at the time of conviction, date of the offense, and any mitigating circumstances (parole, suspension of sentence, pardon, etc.).

3. Briefly describe the extent of rehabilitation of the prospective director, officer, or employee and attach supporting documents, if any. FDIC

4. Attach **geoid** of the Indictment, Information, or Complaint and Final Decree of Judgment, if available. (Normally these can be obtained from the clerk of the court: If **not provided, explain reasons for unavailability**).

5. List any other pertinent facts relative to the crime which are not disclosed in the indictment.

I do hereby certify that the **Biographical** Information (Section BI and Information Relative to Conviction (Section CI are true and correct to the best of my knowledge and belief.

**SIGNATURE OF PROSPECTIVE DIRECTOR, OFFICER OR EMPLOYEE**

**DATE SIGNED**

NOTE: The information requested in Sections B and C above, including the Social Security Number of the prospective director, officer or employee, is solicited pursuant to Section 19 of the Federal Deposit Insurance Act (12 U.S.C. §18291. This information is necessary to assist the FDIC in, assessing the merits of the application. ~~Some of the information, including the Social Security Number, may be provided to any appropriate Federal or State bank regulatory agency and, law enforcement or other governmental agencies for identity verification purposes. Should the information indicate a violation of law, the application may be referred to any agency responsible for investigating or prosecuting such a violation. In addition, in the event of litigation, the application may be presented to the appropriate court as evidence and to counsel in the course of discovery. While submission of the information is voluntary, an omission or inaccuracy may result either in delay in processing the application or in a denial of the application. Falsification of any of the information may serve as a basis for removal of the director, officer or employee if employed by the bank and as grounds for criminal charges.~~

**SECTION D - POSITION TO BE OCCUPIED BY THE PROSPECTIVE DIRECTOR, OFFICER OR EMPLOYEE**

1. TITLE OF POSITION (SI

2. Describe the duties and **responsibilities** of the prospective director, officer or employee. Include extent of supervision exercised over others and/or by others,

**NOTE:** Should this request be approved, any significant change in the duties and/or responsibilities of the prospective director, Officer or employee which meets within 12 months subsequent to such approval must be reported in writing to the Regional Director of the Federal Deposit Insurance Corporation Region in which the bank is located.

**SECTION E -NOTIFICATION OF FIDELITY INSURER**

The bank's fidelity insurer is to be notified of all pertinent information regarding the conviction of the prospective employee. Assurances from the fidelity insurer must be obtained, in writing, stating that the prospective director (if applicable), \*Picon, or employee will be covered by the bank's fidelity bond. This application and the information requested herein may be submitted prior to notification of the bonding company; however, the Corporation's consent will be subject to a condition that written assurance of fidelity coverage to the same extent as others in similar positions be obtained by the bank.

**SECTION F • ADDITIONAL INFORMATION IN SUPPORT OF THIS REQUEST**

List any other appropriate information,

I do hereby certify that the Board of Directors adopted a resolution which delegated the undersigned the authority to make applications pursuant to Section 19 of the Federal Deposit Insurance Act or has adopted a resolution authorizing this application pursuant to Section 19 of the Federal Deposit Insurance Act.

SIGNATURE OF BANK OFFICIAL

This is an official document of the Federal Deposit Insurance Corporation. Providing false information may be grounds for prosecution under the provisions of Title 18, Section 1001 of the United States Code and may be punishable by fine or imprisonment.